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because the mill was erected to reduce the ores taken from the mine and was dependent for its value upon the mining operations. This decision was based upon a similar case, under the same statute, decided by the Supreme Court of the United States, *Springer Land Association v. Ford*, 168 U. S. 513, where a lien for the construction of an irrigation ditch was extended not only to the strip of land sixty feet wide and twenty-six miles long which was actually occupied by the ditch, but also to all the land owned by the ditch company which the ditch was constructed to benefit.

The question involved, while an interesting and important one, seems to belong to that class in which no general rule is capable of formulation. Individual cases will receive special treatment according to their special facts. Logical analysis appears equally favorable to both constructions, and the above decisions give a wide enough range of precedents to suit the most exacting taste.

E. R. S.

MAY A MURDERER ACQUIRE PROPERTY FROM HIS VICTIM BY DESCENT OR DEVISE?—The increasing frequency with which courts of last resort are being called upon to determine whether or not a murderer, or one claiming through him, is entitled to claim property coming either by devise or by reason of the statutes of descents from his victim affords students of our moral progress food for thought. Within the past twenty years nine such cases have been decided, while there seems to be no record of any case involving the precise question prior to 1888. But aside from the ethical question, there is, to lawyers, another most interesting question involved, namely, can the murderer, who has committed the crime for the purpose of possessing himself of the deceased's property, succeed thereto, whether by will or otherwise, the statutes of the state in which the question arises making no exceptions covering such cases?

It seems that the first of the reported cases is *Owens v. Owens*, 100 N. C. 240, 6 S. E. 794, decided by the Supreme Court of North Carolina in 1888. In that case a widow, who had murdered her husband, filed an application to have dower assigned her. The court, while expressing the most profound abhorrence and horror for the deed and the result which their interpretation of the law led to, concluded that since the terms of the statute were plain and unambiguous, leaving no room or excuse whatever for construction or for the incorporation of an exception not therein contained, the widow must be allowed her dower estate. The court also argued that by holding otherwise they would be subjecting the widow to an additional punishment by way of forfeiture, which would be contrary to their constitution. In 1890 the Nebraska Supreme Court considered the case of *Shellenberger v. Ransom*, 31 Neb. 61, 47 N. W. 700, 10 L. R. A. 810, 28 Am. St. Rep. 500, and decided that the plaintiffs, who claimed through a conveyance from a father who had murdered his daughter for the purpose of securing the title to the property so conveyed, were not entitled to the estate. In reaching its conclusion the court depended largely upon the case of *Riggs v. Palmer*,

infra. A rehearing was granted, however, and a second opinion rendered. This second opinion, reported in 41 Neb. 631, 59 N. W. 935, 25 L. R. A. 564, appears to be by a Supreme Court commission and not by the same court that delivered the first opinion. In this second opinion the commission repudiates the decision first handed down, for the reason, as it appears, that the case of *Riggs v. Palmer*, upon which the first opinion was based, was in turn based largely upon *New York Mutual Life Ins. Co. v. Armstrong*, 117 U. S. 599, which case, in the view taken by the commission, did not support the conclusion reached in *Riggs v. Palmer*. In *Carpenter's Estate*, 170 Pa. St. 203, 32 Atl. 637, 29 L. R. A. 145, 50 Am. St. Rep. 765, decided in 1895, the facts seemed to be that a son had been convicted of murdering his father, and at the same time his mother had been convicted of having been an accessory after the fact. The court held, Judge WILLIAMS dissenting, that they were not, for that reason, prevented from inheriting the property of the father and husband. The reasons for this decision seem to be the same as given by the North Carolina court in *Owens v. Owens*, supra. In 1895 the Supreme Court of Ohio in *Deem v. Milliken*, 53 Ohio St. 668, 44 N. E. 1134, affirming without opinion 6 Ohio C. C. Rep. 357, in 1904 the Iowa court in *Kuhn v. Kuhn*, 125 Iowa 449, 101 N. W. 151, and in 1906 the Kansas court in *McAllister v. Fair*, 72 Kan. 533, 84 Pac. 112, 4 MICH. L. REV. 653, arrived at the same conclusions for practically the same reasons.

On the other hand, in 1889 the Court of Appeals of New York, reversing a judgment of the General Term of the Supreme Court, held, Judges GRAY and DANFORTH dissenting, that a devisee, who had murdered his testator for the purpose of securing the property, would not be permitted to take. *Riggs v. Palmer*, 115 N. Y. 506, 22 N. E. 188, 5 L. R. A. 340, 12 Am. St. Rep. 819. The conclusion of the court is based upon an implied exception to the statute of wills, that since at common law no one could profit by his own fraud or wrong and the result otherwise would be so contrary to the very nature and fitness of things, it must be presumed that the legislature could not have meant such an unusual and unjust result to follow from the literal terms of the statute. Accordingly the court, in effect at least, held that no title had passed to the murderer. A few years later the doctrine of this case was considered in the course of the opinion in a case not exactly like it as to facts, and the court then attempted to explain their holding in *Riggs v. Palmer* by stating that they had not held that no title passed by virtue of the will, but that the real result of the case had been to hold that the murderer, while holding the legal title, held it as trustee *ex maleficio* for the benefit of the heirs. *Ellerson v. Westcott*, 148 N. Y. 148, 42 N. E. 540. In the opinion in *Riggs v. Palmer*, Judge EARL, speaking for the majority of the court, refers to *Owens v. Owens*, supra, then just recently decided, and expressly refuses to follow it. The cases which have been decided since *Riggs v. Palmer* contrary to its doctrine have either expressly refused to follow it or have distinguished it on the ground that the rule regarding devises and bequests under a will may well be different

from those cases in which the title descends by virtue of the statute alone. For instance, the Kansas court, in *McAllister v. Fair*, supra, says: "There is a manifest difference, however, between private grants, conveyances and contracts of individuals and a public act of the legislature." In *McKinnon v. Lundy*, 24 Ont. Rep. 132, afterward affirmed under name of *Lundy v. Lundy* (1894), 24 Can. Sup. Ct. 650, the court held that a devisee who feloniously caused the death of his testator was not entitled to take the property, and that it makes no difference that the claimant is convicted of manslaughter and not of murder. The first and apparently the only case which has squarely followed the principle of *Riggs v. Palmer* is *Perry v. Strawbridge*, 209 Mo. 621, 108 S. W. 641, decided in February, 1908, and commented upon in 7 MICH. L. REV. 71. In that case it seems a husband murdered his wife, later committing suicide; the case arose through a contest between the heirs of each claiming the estate of the murdered wife. The court, in an excellent opinion written by Judge GRAVES, an opinion admirable for its clearness and persuasive argument, held that though by the statute the heirs of the husband should take the estate, still the heirs of the wife should, under the facts presented, inherit. That at common law a murderer could not inherit from his victim or derive profit from his crime; that the statute of descents and distributions is largely a mere declaration of the common law; that to give the statute the force of vesting the title in the murderer would be to give it the effect of changing the common law; that statutes in derogation of the common law must be strictly construed and that these are such cases as the court should not ascribe to the legislature an intent to change the common law, the statute being not a specific enactment that murderers should inherit, but rather an intent to make the statute, so far as it goes, a mere declaration of the common law, leaving it in other respects with the same incidents and exceptions as existed and were by it recognized, seems to be the course of the argument of the court in reaching its conclusion. The court then cites a number of cases as illustrations of the fact that it is well settled doctrine that a court will often disregard the strict letter of the law, when to follow it literally would be to reach a result abhorrent to reason. Lack of space forbids our noting more in detail the cases cited for this purpose, for they seem to support the Missouri court. Among the cases so cited, however, are *Sams, etc., v. Sams, Admr.*, 85 Ky. 396; *Church of the Holy Trinity v. United States*, 143 U. S. 457; *Venable v. Railroad*, 112 Mo. 103; *Chouteau v. Railroad*, 122 Mo. 375; *Keeney v. McVoy*, 206 Mo. 42.

The most recent case, however, is *Wellner v. Eckstein*, — Minn. —, 117 N. W. 830, decided September 25, 1908, in which the court considers whether a widow, who has murdered her husband for the purpose of securing his property, may inherit under the Minnesota statute of descents. Because a majority of the court were of the opinion that the case should be disposed of on another ground, the point was not definitely settled in the law of that state. Chief Justice START wrote an opinion, in which Judge BROWN concurred, expressing the view that the widow should

inherit because the terms of the statute were plain and unequivocal. Judge ELLIOTT wrote an opinion, in which Judge JAGGARD concurred, expressing the view that she should not inherit, or, if she does inherit, that she should be held a trustee *ex maleficio* for the benefit of the other heirs. Judge LEWIS, the fifth member of the court, does not express himself unqualifiedly, being of the opinion that the case should be disposed of on the other ground, but seems to lean toward the view taken by Judges ELLIOTT and JAGGARD. Judge ELLIOTT's opinion is a forceful expression of the reasons why the court should hold the claimant a trustee *ex maleficio*, thus giving effect to the language of the statute and still, at the same time, preventing a profit from being derived from the crime. The opinion concludes: "In my judgment, the widow acquired the naked legal title to this real estate, subject to the power of a court of equity to deprive her of its beneficial use and require its conveyance as justice and equity demand," etc.

There seems to be no doubt that at the common law the rule was that a murderer could not succeed to the title to property left by his victim or derive benefit from his crime. This was the civil law rule. DOMAT, part 2, book 1, tit. 1, par. 3; CODE NAPOLEON, par. 727; MACKELDAY'S ROMAN LAW, 530, 550. That this was the rule at common law see *Box v. Lanier*, 112 Tenn. 393; WHARTON ON HOMICIDE, § 665 (3rd Ed.), and cases cited.

To hold that the murderer takes both the legal and equitable estates shocks the moral sense of everyone, and it is much to be desired that some way, consistent with legal or equitable principles, be found by which such result may be avoided. To our mind the opinion of Judge GRAVES in *Perry v. Strawbridge*, supra, concluding that no title passes, presents arguments almost unanswerable; but in case the court should not feel inclined to disregard what are apparently the plain and unambiguous terms of the statute by giving it the construction then adopted, there seems no good reason why the view expressed by Judge ELLIOTT in *Wellner v. Eckstein* should not be adopted, holding the murderer a trustee *ex maleficio*. Naturally the surest way of obviating all difficulty would be the enactment of statutes in the various states, as has already been done in a few. See 4 MICH. L. REV. 653.

R. W. A.

ONE WAY TO PREVENT SOME OF THE "LAW'S DELAYS."—In view of discussions concerning "The Law's Delays" which have been had before several Bar Association meetings lately, the case of *In re McHugh*, 116 N. W. 459, decided by the Supreme Court of Michigan, is of interest. In this case two attorneys had been summoned by the trial court to answer a charge of contempt in failing to appear in court on the day set for the trial of one accused of murder whose defense they had undertaken, their failure to appear being alleged to be "for the purpose of obstructing the course of justice." After a hearing they were found guilty of contempt and each was fined two hundred and fifty dollars, one of them being sentenced, in addition, to imprisonment for thirty days. The Supreme Court affirmed the contempt proceedings of the trial court.